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July 29, 2003

Via Overnight Mail

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: **Petition for Rule Making**
The University of North Carolina, licensee of
WUND-TV, WUND-DT, Columbia, North Carolina

Dear Ms. Dortch:

On behalf of The University of North Carolina, licensee of non-commercial television stations WUND-TV, Channel 2, and WUND-DT, Channel 20, Columbia, North Carolina (collectively, "WUND"), enclosed for filing is an original and four copies of a Petition for Rule Making. This Petition proposes a change in WUND's community of license from Columbia, North Carolina, to Edenton, North Carolina and corresponding changes in the NTSC and DTV tables of allotments.

Should any questions arise in considering this matter, it is respectfully requested that you communicate with this office.

Sincerely,


Marcus W. Trathen
Counsel to The University of North Carolina

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03-240

Enclosures

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)
)
Amendment of Section 73.606(b))
Table of Allotments)
Television Broadcast Stations)
(Columbia and Edenton, NC))
and)
Amendment of Section 73.622(b))
DTV Table of Allotments)
Television Broadcast Stations)

FCC-MAILROOM

MB Docket No. _____
RM- _____

To: Chief, Allocations Branch
Policy & Rules Division
Media Bureau

PETITION FOR RULE MAKING

The University of North Carolina ("Petitioner"), licensee of Non-Commercial Television Station WUND-TV, Columbia, North Carolina, Channel 2, and WUND-DT, Channel 20 (collectively "WUND"), by its counsel, hereby petitions the Commission, pursuant to Section 1.420(i) of the Commission's Rules, to specify a new community of license for WUND. Petitioner requests the Commission to amend the NTSC Table of Television Allotments (47 C.F.R. § 73.606(b)) by changing Petitioner's channel allotment from Channel 2, Columbia, North Carolina, to Channel 2, Edenton, North Carolina, and to modify Petitioner's license accordingly. Petitioner also requests the Commission to amend the DTV Table of Allotments (47 C.F.R. § 73.622(b)) by changing Petitioner's channel allotment from Channel 20, Columbia, North Carolina, to Channel 20, Edenton, North Carolina, and to modify Petitioner's license accordingly. In support hereof, Petitioner states as follows:

Pursuant to Section 1.420(i) of the Commission's Rules, Petitioner hereby respectfully requests the Commission to amend the NTSC and DTV Tables of Allotments by changing WUND's community allotment from Columbia, North Carolina to Edenton, North Carolina.

There are three requirements necessary to obtain a change of community of license pursuant to Section 1.420(i) of the Commission's rules. First, the new allotment must be mutually exclusive with the existing allotment. Second, the allotment to the new community must better serve the Commission's allotment priorities and policies than maintaining the allotment to the existing community. Third, the change must not deprive a community of its sole existing broadcast station. *See Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Bessemer and Tuscaloosa, Alabama)*, Report and Order, 5 FCC Rcd 669 (1990), ¶ 8 n.9 ("*Bessemer R&O*").

First, Petitioner does not propose to relocate the transmitter site for WUND, nor does Petitioner propose to operate on different channels. Thus, Petitioner's proposal to change its community of license to Edenton is mutually exclusive with its existing authorization at Columbia. *See Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (San Bernardino and Long Beach, California)*, Report and Order, 13 FCC Rcd 9 (1998), ¶ 2. The predicted community contours of the station would remain the same and there would be no change in the area or population served by the station with its over-the-air signals. Attached as Exhibit 1 are maps showing WUND's service contours ("*Contour Maps*"). Additionally, WUND's programming would not change.

Second, the Commission's consideration of whether the proposed allotment better serves the allotment priorities and policies than does the current allotment is essentially a consideration of the

public interest. In order to determine where the public interest lies, the Commission must consider the following allotment priorities:

- (1) Provide at least one television service to all parts of the United States;
- (2) Provide each community with at least one television broadcast station;
- (3) Provide a choice of at least two television services to all parts of the United States;
- (4) Provide each community with at least two television broadcast stations; and
- (5) Assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.

See Sixth Report and Order on Television Allocations, 41 FCC 148, ¶ 63 (1952). It is axiomatic, of course, that these “television allotment priorities are not rigidly applied.” *Bessemer R&O*, ¶ 14; *accord Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) (“*Community of License R&O*”), ¶ 25. Of these five priorities, the instant request implicates number (5) and, arguably, number (2).

Columbia and Edenton are both located in the Albemarle Sound region. Petitioner’s proposal to change its community of license from Columbia to Edenton is not a proposal to change to a new “community,” within the meaning of Section 307(b) of the Communications Act. The Commission has generally recognized that television is a regional service, and therefore has employed an expanded definition of “community” in television assignment cases. *See Bessemer R&O*, ¶ 12. Indeed, as the Court of Appeals for the D.C. Circuit has noted, the term “communities,” as used in section 307(b) of the Communications Act is not limited in meaning, but may include metropolitan

areas. *See Winter Park Communications, Inc. v. F.C.C.*, 873 F.2d 347, 351 (1989). Similarly, Petitioner submits that the term “community” can refer to larger geographic areas, spanning multiple counties and towns. In fact, Petitioner embraces just such an approach: “UNC-TV’s network transmitters broadcast television programs simultaneously, allowing viewers in all parts of the state see the same programs at the same time, 24 hours a day, seven days a week. In North Carolina, UNC-TV is unique in its ability to knit citizens of our large, diverse state into a single community.”¹

Petitioner submits that, at a minimum, the entire Albemarle Sound region is one single community, from a cultural and commercial perspective, and that the relevant community is actually even broader, encompassing not only the Albemarle Sound region, but the sparsely populated areas comprising the northeastern corner of North Carolina and the southeastern corner of Virginia. The towns and villages in this region are closely tied as one community, as evidenced by the fact that residents of Columbia and Tyrrell County, and Edenton and Chowan County, as well as residents of other towns and counties in northeastern North Carolina, work, shop, and recreate in southeastern Virginia, and southeastern Virginians likewise regularly avail themselves of the culture and commerce of northeastern North Carolina. Significantly, the towns and villages throughout the region are cross-pollinated by a variety of media outlets—television, radio, and newspaper—located in both North Carolina and Virginia. Thus, under the broad definition of “community,” as used in section 307(b) of the Communications Act, Columbia and Edenton are component parts of the same community. For this reason alone, the second and third requirements to change a station’s

¹ This statement of Petitioner’s statewide non-commercial station network and programming mission is available at its website, at <http://www.unctv.org/aboutUNCTV/viewingUNCTV.html>.

community of license are satisfied: essentially, there is no “new” community and no “deprived” community in the Petitioner’s proposal.

Thus, while there is little doubt that Columbia and Edenton, as the seats of their respective counties, each individually possess the indicia of “community” for allotment purposes, there is also little doubt that both towns are merely components of the larger community encompassing the northeastern region of North Carolina together with the southeastern region of Virginia. Indeed, residents in many towns and villages in the sparsely-populated region tune into WUND for their public television needs and interests. Thus, allotment priority number (2) is not at issue here at all, as the relevant “community” for WUND already expands beyond the township of Columbia, North Carolina.

Even if Petitioner’s proposal does represent a change to a new community, the public interest would be served by grant of the proposal, as the change in community of license would result in a net increase of viewers who want to receive WUND by satellite in the Norfolk-Portsmouth-Newport News DMA (the “Tidewater Market”). The regional community at issue here is divided between two Nielsen DMAs: the Greenville-New Bern-Washington DMA and the Norfolk-Portsmouth-Newport News DMA, with Columbia in the former and Edenton in the latter. Grant of the proposed change in community of license would allow WUND to avail itself of carriage on DBS in the Tidewater Market, the market which encompasses Edenton and northeastern North Carolina as well as southeastern Virginia, but which excludes Columbia. Such carriage would significantly benefit the public in the Tidewater Market who subscribe to satellite service. Indeed, there is a significant viewing population in the Tidewater Market, including residents of southeastern Virginia, interested in receiving WUND’s signals over DBS. The region is divided in such a way as to render WUND,

with its current community of license, ineligible for satellite carriage in the Tidewater Market because Columbia is geographically outside of that DMA. But a change in WUND's community of license, to a location just across the Albemarle Sound and within the same regional "community," would allow Petitioner to avail itself of DBS carriage in the Tidewater Market to satisfy the viewing public in that market. Under this proposal no viewer would lose, and thousands of satellite viewers who are currently in WUND's Grade B contour or beyond and who want to receive a higher quality signal by satellite, would benefit. In other words, the change in community of license would result in additional reception service, albeit via DBS, and, therefore, all other things being equal, the Commission should grant the instant request. *Cf. Bessemer R&O*, ¶ 14 ("We also note that approval of the change in community of license would provide no additional reception service because [Ppetitioner] does not intend to change its technical facilities.").

Furthermore, Columbia is a very small town, and getting smaller. The population of Columbia, according to the 1990 Census, was 836, and, according to the 2000 Census, is now a mere 819. By comparison, Edenton is substantially larger,² a fact acknowledged by the Commission eight years ago. *See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Edenton, Columbia and Pine Knoll Shores, North Carolina)*, Notice of Proposed Rule Making, 10 FCC Rcd 4368 (1995), ¶ 3. And, Edenton continues to grow: the 1990 Census listed Edenton's

² Because WUND is a non-commercial station and Petitioner is a governmental organization, it is beyond cavil that Petitioner here does not seek to align itself with a larger metropolitan area for commercial reasons. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), ¶ 27.

population at 5,268, and the 2000 Census put its population at 5,394.³ These population figures are evidence that a change in the community of license to Edenton would serve allotment priority number (5) and that the change would be in the public interest because a larger population (but one still far short of “urban”) would have a first transmission service.

Third, Petitioner’s proposal would cause a reallocation of the only television transmission service at Columbia, North Carolina. The Commission has stated, however, that there may be instances where a reallocation of the only transmission service is not fatal to an allocation proposal. *See Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) (“*Community of License MO&O*”), ¶¶ 16-20 . The situation here presented is just such a case. Accordingly, to the extent the Commission may deem it necessary, Petitioner hereby requests a waiver of the Commission’s prohibition on the removal of an existing station representing a community’s sole local broadcast service. *See id.*

Because WUND’s programming, transmission site, studio location, and employees would be unaffected by the proposed change in community of license, the typical factors giving rise to concerns regarding the “loss” of the sole transmission service are not present. The Commission’s concern for a community’s loss of its sole existing transmission service appears to be based not only upon a “result[ing] . . . diminishment rather than enhancement of local service” and a “reduc[tion] [in] the number of communities enjoying local service,” *Community of License MO&O*, ¶¶ 16, 18,

³ Census data available at the following URL addresses:
<http://landview.census.gov/population/censusdata/places/37nc.txt> (1990);
http://factfinder.census.gov/servlet/GCTTable?ds_name=DEC_2000_SF1_U&geo_id=04000US37&_box_head_nbr=GCT-PH1&format=ST-7 (2000).

but also upon the public's "reliance" on the station, *see, e.g., Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Elk City, Oklahoma and Borger, Texas)*, Report and Order, 16 FCC Rcd 16467 (2001), ¶ 4. Here, however, the public's "reliance" would be unaffected by the proposal to change community of license. Petitioner's programming would be unaffected by the change since Petitioner's programming is already responsive to the public's educational and informational needs and interests in both Columbia and Edenton, not to mention southeastern Virginia. WUND's coverage of "local" events already includes both Edenton and Columbia events, and would continue to do so even if the table of allotments were changed. Thus, to the extent that the Columbia public has become "reliant" on WUND as a transmission service, the mere administrative change of WUND's community of license from Columbia to Edenton would not undermine that reliance in any manner.

In the *Community of License MO&O*, the Commission noted that one factor the Commission might consider in such a waiver request is the proposed provision of first reception service to a significantly sized population. The Commission was, however, otherwise silent with respect to what factors would justify a waiver, and Petitioner's research has not revealed any. Because Petitioner is not relocating its tower or transmitter, the instant proposal would not provide first reception service to any population—though it would provide a first transmission service to Edenton, North Carolina, a town some 6 ½ times the size of Columbia. In any event, Petitioner submits that in the facts and circumstances present in the instant context makes the transmission service-reception service dichotomy a distinction without a difference. Petitioner nevertheless submits that the instant proposal merits a grant of the waiver (to the extent a waiver is necessary in the first instance) because

it would result in a net increase in service to viewers who want to receive WUND through satellite carriage in the Tidewater Market, and no viewer or community would be adversely affected.

Significantly, the instant proposal would not remove reception service from any household currently receiving the WUND signal. In fact, reception by households currently receiving the WUND signal would be entirely unaffected by the proposed change in community of license, both in terms of programming content and quality and strength of signal. Having recently invested over \$7 million in Petitioner's tower/transmission site, Petitioner has no intention to move it from where it is situated on the Tyrell County and Washington County lines.

It is worthy of note that Petitioner could already, if it so desired, maintain its main studio in Edenton, which is less than 25 miles from Columbia and which is well within the principal community contours of WUND.⁴ (*See Contour Maps* attached as Exhibit 1.) On the one hand, then, a change in community of license from Columbia to Edenton is an administrative change only in name. On the other hand, however, it is a change with significant, positive viewership effects. As noted above, a change in community of license would permit WUND to avail itself of carriage on DBS in the Tidewater Market. Under this proposal, no viewer loses, and thousands of satellite viewers in the Tidewater Market who are currently in WUND's Grade B contours or beyond and who want to receive a higher quality signal by satellite, stand to benefit from the change in community of license. Petitioner's research did not reveal any proceedings in which the Commission considered the additional viewership of a station resulting from satellite carriage in rendering a decision on a proposed change to community of license. *But cf. Bessemer R&O*, ¶ 14 ("We also note that approval of the change in community of license would provide no additional reception service

⁴ Petitioner has no intention of moving its studio to Edenton.

because [Petitioner] does not intend to change its technical facilities.”). *See generally Community of License R&O*, ¶ 15 (stating that a commenter “notes that television allotment priorities have not been revised since 1952, and do not account for the availability of alternative video delivery media such as . . . satellite dishes”).

WUND is uniquely situated in the instant case, however, such that the Commission should—indeed, the public interest requires the Commission to—factor satellite carriage into the change-in-community-of-license analysis. Petitioner currently has three stations (WUND, WUNM-TV/DT, and WUNK-TV/DT) licensed to communities in the Greenville-New Bern-Washington DMA, and no stations licensed to a community in the Tidewater Market. If and when local-into-local satellite carriage becomes available in the Greenville-New Bern-Washington DMA, even absent WUND, Petitioner will be able to elect DBS carriage for one of its other two stations to serve its viewers who are satellite subscribers in that DMA.⁵ In contradistinction, unless and until WUND’s community of license is changed to Edenton, Petitioner has no opportunity to elect DBS carriage in the Tidewater Market, and the public in that market has no opportunity to receive WUND’s programming via satellite. Attached as Exhibit 2 is a map delineating satellite coverage in markets where Petitioner operates stations.

Since the criteria for changing Petitioner’s community of license are satisfied with respect to NTSC Table of Allotments, the DTV Table of Allotments should also be amended to show Edenton as Petitioner’s community. Petitioner is not requesting a change in the channel of its DTV allotment pursuant to section 73.622, and thus it is not necessary to show compliance with technical

⁵ Because all of Petitioner’s stations simulcast the same programming, viewers receiving WUNM-TV/DT or WUNK-TV/DT, whether off-air or via satellite, would receive the same programming as that broadcast on WUND.

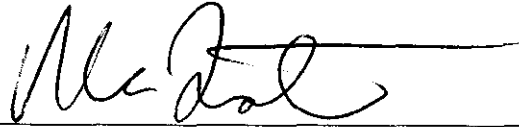
criteria set forth in section 73.636(c). As with respect to the NTSC Table of Allotments, Petitioner is not proposing to operate its digital station on another channel or proposing to relocate its digital transmitter facilities. As with other television licensees, the Petitioner has a parallel license covering its community for NTSC and digital operations. Since the criteria for amending the NTSC Table of Allotments is satisfied, the Commission should likewise amend the DTV Table of Allotments to be in conformity therewith.

Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Commission grant the instant petition and (1) amend the Table of NTSC Television Allotments, Section 73.606(b) of the Commission's Rules, by changing the community of license of Channel 2, Columbia, North Carolina to Edenton, North Carolina; and (2) amend the DTV Table of Allotments (47 C.F.R. § 73.622(b)) by changing the community of license of Channel 20, Columbia, North Carolina, to Channel 20, Edenton, North Carolina. Petitioner also respectfully requests that the Commission modify Petitioner's licenses accordingly.

Respectfully submitted,

THE UNIVERSITY OF NORTH CAROLINA

A handwritten signature in black ink, appearing to read 'McJal', written over a horizontal line.

Marcus W. Trathen

Stephen Hartzell-Jordan

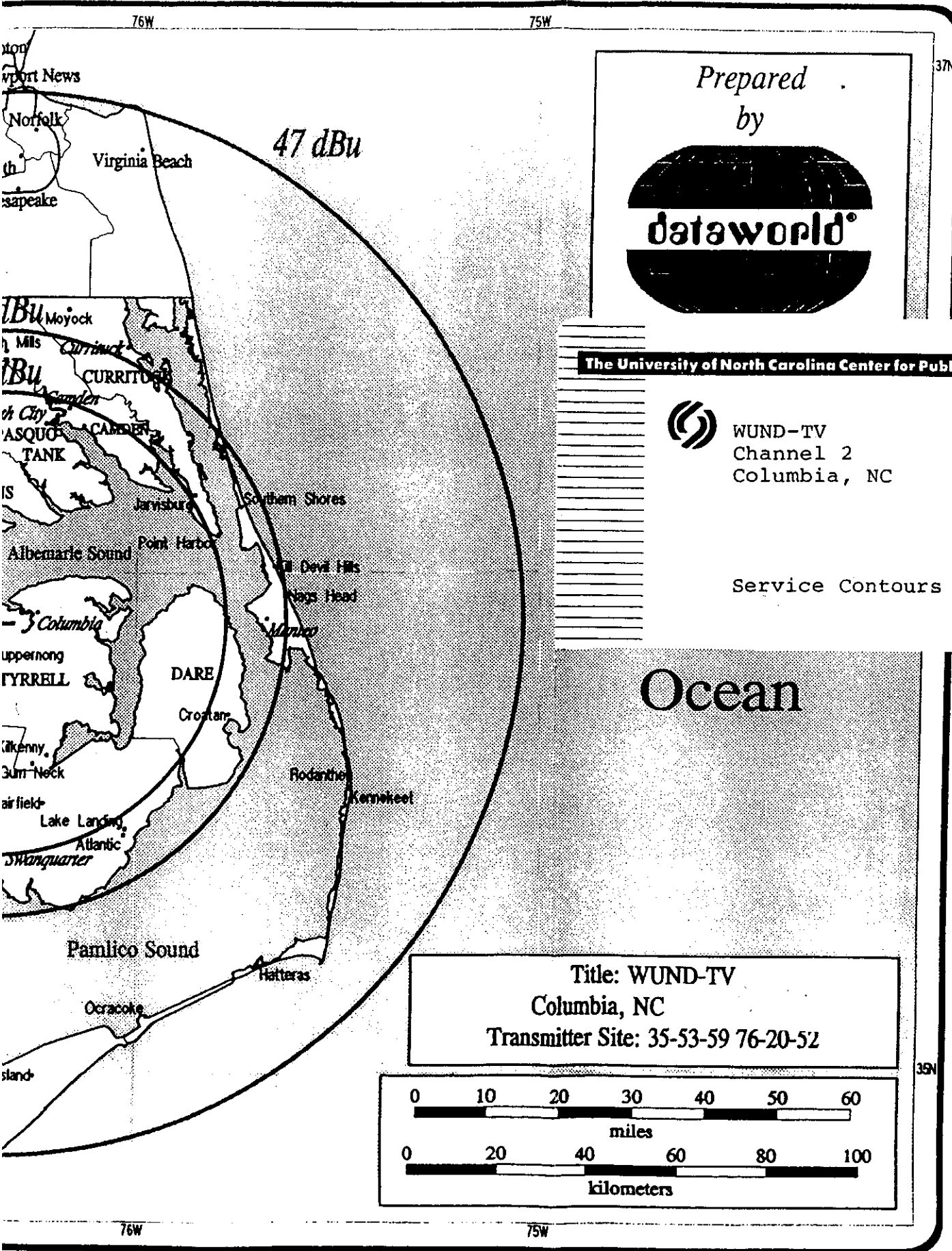
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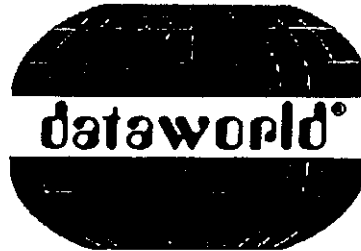
Its Attorneys

July 29, 2003

Exhibit 1



Prepared
by



The University of North Carolina Center for Public Television



WUND-TV
Channel 2
Columbia, NC

Service Contours

Ocean

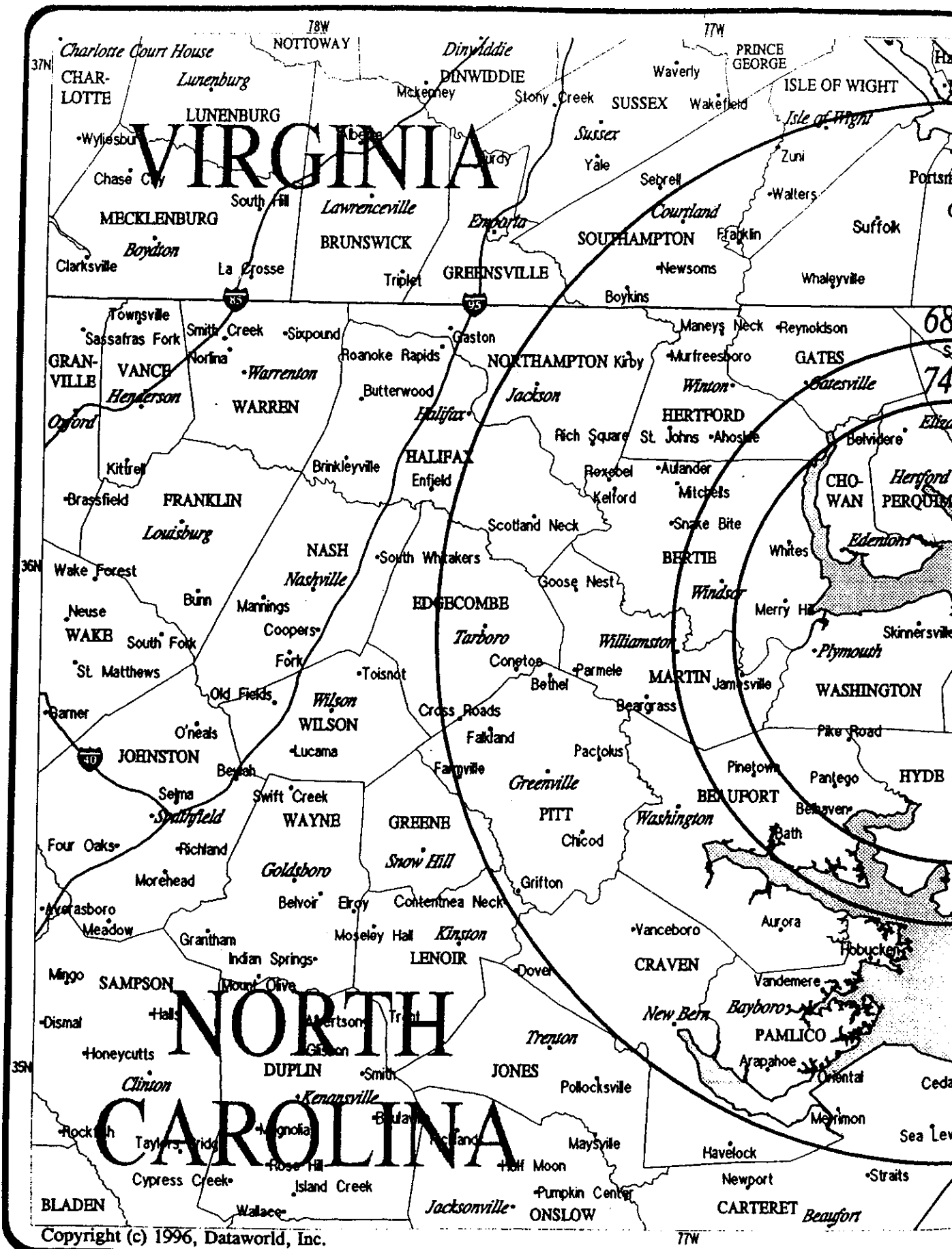
Title: WUND-TV
Columbia, NC
Transmitter Site: 35-53-59 76-20-52

0 10 20 30 40 50 60

miles

0 20 40 60 80 100

kilometers



SIGNAL™: wundot_lic_coverage_map

Study Grid Boundary

Sites

Site: WUND-OT

N35°54'00.00"W 76°20'45.00"E 2.0 m

WUND-OT Tx HLA GL: 488.0 m Total ERPd: 27.35 dBSM

Grp: 1 omni-horizontal 0.0° 507.2500 MHz

Reference Grid (spacing: 30')

Notes

prepared by

Larry H. Will, P.E.

Glen Mills, PA 19342

KILOMETERS

-25 0 25

COVERAGE MAP

WUND-OT LICENSE

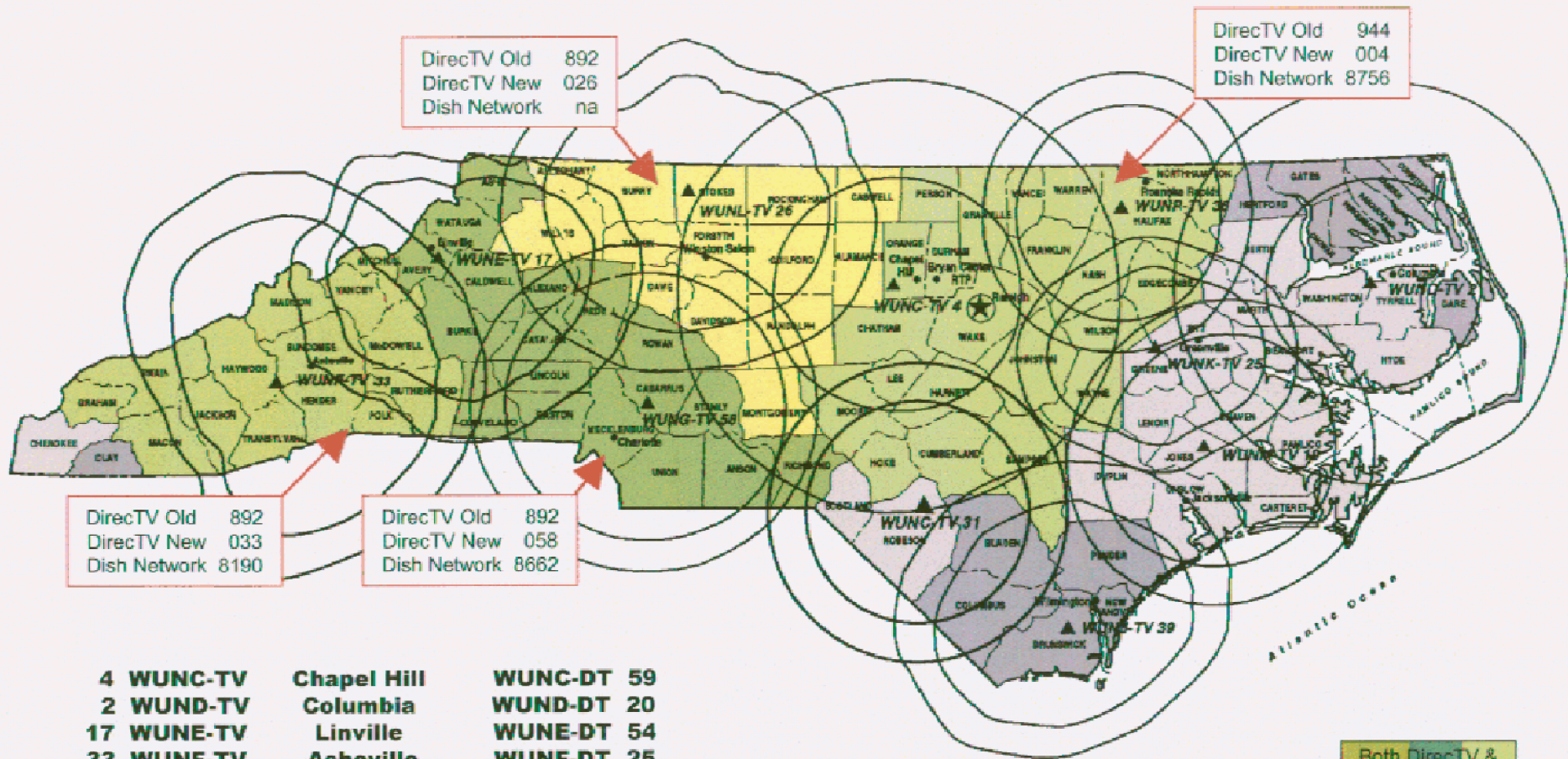
FIGURE A

07/28/2003



Exhibit 2

UNC-TV Service Via Direct Broadcast Satellite



4 WUNC-TV	Chapel Hill	WUNC-DT 59
2 WUND-TV	Columbia	WUND-DT 20
17 WUNE-TV	Linville	WUNE-DT 54
33 WUNF-TV	Asheville	WUNF-DT 25
58 WUNG-TV	Concord	WUNG-DT 44
39 WUNJ-TV	Wilmington	WUNJ-DT 29
25 WUNK-TV	Greenville	WUNK-DT 23
26 WUNL-TV	Winston-Salem	WUNL-DT 32
19 WUNM-TV	Jacksonville	WUNM-DT 18
36 WUNP-TV	Roanoke Rapids	WUNP-DT 39
31 WUNU-TV	Lumberton	WUNU-DT 25

Both DirectTV &
Dish Network

DirectTV Only
No Dish Network

UNC-TV